

Members

Rep. Ron Herrell, Chairperson
Rep. Dennis Avery
Rep. John Day
Rep. David Frizzell
Rep. Phyllis Pond
Rep. Dean Young
Sen. Richard Bray
Sen. Murray Clark
Sen. David Long
Sen. William Alexa
Sen. Glenn Howard
Sen. Samuel Smith



INTERIM STUDY COMMITTEE ON CIVIL AND FAMILY LAW ISSUES

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Andrew Hedges, Attorney for the Committee
Andrew Roesener, Attorney for the Committee
Mark Goodpaster, Fiscal Analyst for the
Committee

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MEETING MINUTES¹

Meeting Date: September 18, 2001
Meeting Time: 1:00 P.M.
Meeting Place: Kokomo City Hall, 100 S. Union St.,
City-County Chambers
Meeting City: Kokomo, Indiana
Meeting Number: 2

Members Present: Rep. Ron Herrell, Chairperson; Rep. Dennis Avery; Rep. Phyllis Pond; Sen. Murray Clark; Sen. Glenn Howard.

Members Absent: Rep. John Day; Rep. David Frizzell; Rep. Dean Young; Sen. Richard Bray; Sen. David Long; Sen. William Alexa; Sen. Samuel Smith.

Rep. Herrell called the meeting of the Interim Study Committee on Civil and Family Law Issues to order at 1:20 p.m. Rep. Herrell introduced the committee members and noted that the topics before the committee today were (1) tiered corrections and (2) family law as it applies to marriage. Rep. Herrell noted that the discussion of the Uniform Parentage Act would be postponed until the next meeting.

I. Tiered Corrections

JauNae Hanger, Vice Chair of the Indiana State Bar Association's Committee on

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Civil Rights for Children, presented the following testimony to the Committee (see Exhibit 1 for a complete copy of Ms. Hanger's remarks):

- Approximately 1200 children through age 20 are incarcerated in adult prisons in Indiana; 60 of these children are below the age of 18. Under Indiana law, children as young as 10 years old can be placed in the adult system; in practice, it is not uncommon for children as young as 14 or 15 to enter the adult system. Because the number of mandatory waivers has increased from five to 12, more and more first time and non-violent offenders are being sentenced and incarcerated in the adult system.
- Nationally, children placed in adult prison systems have a recidivism rate of from 70-80% within three years of release. By contrast, Missouri, which has a presumption that children under 18 should be treated with age appropriate programs, has fewer than 5 children in adult facilities, and a recidivism rate of 11% for children treated through its Youth Services Division.
- While Indiana's Department of Correction (DOC) has a plan to move most juveniles in the adult system to one facility, this plan has not yet been implemented. Further, even when implemented, this plan will not achieve complete separation because DOC does not have sufficient staff. This committee should obtain more information about the DOC's plan, and should ask DOC to prepare a written report establishing a timeline and providing details of the plan. It is important that the DOC's report include the number and age of juveniles, the types of programs for the juveniles, the frequency and nature of contact that juveniles will have with adult prisoners, and any other details regarding their management by prison officials.
- But while the DOC's plan, if implemented, may improve the situation of juveniles currently in DOC, it will not address the root problem: the number of children in the adult system is too high. Too many children are being waived to adult court, and, consequently, too few children are receiving juvenile services. As we know from other states, serious use of juvenile services will reduce the rate of recidivism among juvenile offenders. Indiana needs to take a broad look at its juvenile system. Indiana should consider reforms that include redefining the jurisdiction of juvenile court judges so that they can reach the serious juvenile offender with age appropriate services. We should empower juvenile judges with the tools they need to create a tailored response to juvenile crime. Perhaps we should establish extended jurisdiction (through age 21 or 23), provide intense supervision, use therapeutic programming, and, in certain cases, permit the threat of adult incarceration if there is no progress toward rehabilitation.
- The Committee on Civil Rights for Children urges this Committee to recommend in its final report the establishment of a study commission to perform an in-depth study of Indiana's current statutory scheme, including current practices, and to identify potential areas of reform. It might be fruitful to compare Indiana's system with the juvenile systems of Missouri, Minnesota, and Texas (Ms. Hanger distributed handouts describing the juvenile system in these states; see Exhibit 2, Exhibit 3, and Exhibit 4). The study commission should include members of the juvenile services community, judges and lawyers who practice in the area of juvenile law, legislators, child welfare workers, educators, and representatives from correctional institutions.
- In the meantime, this Committee should adopt the changes to the automatic waiver statute proposed at the last meeting by Ms. Elliot and Mr. Hahn.

Discussion

Rep. Herrell observed that Ms. Hanger's comparison of recidivism rates between children in juvenile facilities and children in adult facilities was weakened by the fact that

juveniles in adult facilities would have committed more serious crimes than children in juvenile facilities. Ms. Hanger acknowledged that her comparison had some degree of imprecision, but that it was not like comparing apples and oranges. Because the comparison is based on pools of offenders, the differing recidivism rates must have some meaning. Ms. Hanger also noted that juvenile programs in other states had made progress even with some children who committed serious offenses...although she testified that some juveniles did belong in prison. This decision was best made by juvenile judges, and we should not take discretion away from these judges, who can make an individualized determination based on all the facts of the case, including the desires of the victim.

Sen. Howard stated that he believed many of these children lacked role models, and that there would be less recidivism if juveniles were able to meet with individuals who had turned their lives around after being incarcerated. Ms. Hanger noted that rehabilitation was less expensive than incarceration, noting that Missouri's juvenile program cost approximately \$90/child, while the cost for adults incarcerated in surrounding states was approximately \$150. In Indiana, the cost to incarcerate an adult is between \$100 and \$150. Juvenile programs are even less expensive if we include the absence of recidivism.

Sen. Clark asked whether misdemeanants were waived to adult court. Ms. Hanger replied that certain traffic offenses that caused children to be waived to adult court were misdemeanors. Also, the "once-waived" rule means that juveniles who have been previously waived to adult court would always go to adult court, even if they committed a misdemeanor. She also observed that states with blended sentencing were able to use the threat of an adult sentence to keep kids on the straight and narrow. Restorative justice programs also help cut recidivism.

Sen. Clark observed that restorative justice programs were typically local matters, and inquired what suggestions Ms. Hanger had for a statewide restorative justice program. Ms. Hanger said that she had no proposals for a statewide restorative justice program, but that she believed this should be studied.

Sen. Clark noted that it was important that a plan be cost effective, and suggested that judges or the bar association should present concrete legislative proposals. Sen. Clark observed that juvenile justice has been the topic of several study commissions in the past several years. Ms. Hanger stated that it was important that any proposal include resources to fund juvenile programs.

Rep. Herrell stated that victims were often disturbed by disparate results when some juveniles were waived to adult court and others were treated in the juvenile system. Ms. Hanger stated that this juvenile/adult dichotomy was exacerbated by the present either/or system; a blended sentencing scheme would reduce this dichotomy.

Sen. Howard stated that it was important that ministers and other members of the clergy get involved in this issue, and take the lead on establishing a network to help juveniles behave and function in society. Ms. Hanger agreed, and noted that most successful programs use intensive supervision and focus on developing life skills.

Rep. Avery noted that in 1979-80, Indiana passed a substantial juvenile reform act, but there were no programs. Ms. Hanger stated that this is why a panel should study this issue. Rep. Avery observed that there was a large panel, but there was no money. Ms. Hanger stated that it was important to make up front investments, or the result would be the need to build more prisons in the future. It would also be important to track data, too, so that people can see the value of their investment.

Rep. Herrell asked whether we had data on first offenders in DOC? Ms. Hanger stated that she believed that DOC should have that information.

Rep. Avery asked whether the Criminal Justice Institute tracked juvenile data. Ms. Hanger responded that she did not believe so. She believed that DOC had some data, but it might not be specific enough.

Rep. Avery suggested that DOC should provide some information at the next meeting concerning where juvenile offenders were being sent.

II. Family law as it applies to marriage.

Micah Clark, executive director of the Indiana Family Institute, provided the Committee with a packet of material (Exhibit 5) and presented the following testimony:

- Recent studies have shown that married couples enjoy substantial sociological and health benefits as compared with people who are not married. Married couples are physically healthier, less likely to be involved in crime, less likely to abuse alcohol, and are less likely to abuse drugs. Kids who are the products of marriage are victimized less frequently by criminals, while kids who are the product of non-traditional families are at greater risk for abuse, criminal involvement, or psychiatric problems.
- A study by the University of Chicago of couples on the verge of divorce compared those couples who divorced with those couples who stayed together. 86% of the couples who stayed married reported that they became happier as time went on. People who divorced, by contrast, became less happy as time passed. Divorced women, even if they subsequently remarried, were worse off than women who stayed married. Married women were more satisfied sexually, and were less likely to be abused. Divorced women suffer from a greater likelihood of abuse at the hands of their ex-husband or boyfriend. Divorced women are at greater risk for alcoholism, depression, and related problems.
- This Committee should consider supporting the covenant marriage bill (HB 2112) from the 2001 legislative session, as well as SB 490 (1997). (Both HB 2112 and SB 490 are included in Exhibit 4).
- HB 2112 allows couples to choose a different divorce mechanism at the time of marriage. The couple may only divorce for certain reasons, and must undergo mandatory counseling before divorce. Couples are not required to choose a covenant marriage.
- SB 490 extends the waiting period for divorce when the married couple have minor children.
- Some states with longer waiting periods than Indiana have a lower divorce rate. Also, some counseling programs are successful at restoring marriages, but require more than 60 days to become effective.

Discussion

Rep. Avery noted that marriage statistics could be misleading. One reason that divorce in Indiana is so high is because so many people in Indiana get married in the first place. There are many other states where the marriage rate is much lower than Indiana. Also, Indiana measures divorce differently from some other states: Indiana counts divorce filings, not completed divorces. Rep. Avery also expressed concern that some churches might coerce people into covenant marriages by only performing marriages for people who agree to a covenant marriage. Also, some churches address the divorce problem by requiring premarital counseling before performing a marriage. Rep. Avery also observed that he was concerned about state government interfering in people's marriages. Mr. Clark stated that he was not advocating the repeal of no-fault divorce, and that the covenant marriage proposal was optional.

Sen. Howard stated that he was also concerned about the power of the state, and noted that people changed after marriage, sometimes becoming abusive. Mr. Clark stated that there was less abuse in marriages than in other relationships. Mr. Clark also noted that the government already regulates marriage, and the state should preserve its interest in strong marriages.

Rep. Herrell observed that premarital counseling was good, and stated that

perhaps the state can do a better job at encouraging communities and churches to help people develop strong marriages.

Rep. Avery observed that there was no waiting period to get a marriage license. Mr. Clark stated that this might be a good idea. Because covenant marriages have required counseling, there is a de facto waiting period for a license. But it might be a good idea to approach this problem from both ends. Perhaps there would be less government if marriage were stronger.

Sen. Clark recommends that, when the Committee votes on legislative proposals, it endorse the covenant marriage and the extended waiting time bill for divorces where there (1) are children and (2) there is no abuse.

Rep. Herrell stated that he did not believe that divorce was easy, even if completing the paperwork might be easy. He would also like some data on how many divorces with children were actually final within 60 days. Rep. Herrell observed that many judges do require couples to undergo counseling, but that this often does not help the children. Rep. Herrell also wondered whether a covenant marriage law would really strengthen families. Mr. Clark responded that divorce in Indiana might not be easy, but it was easier in Indiana than in surrounding states.

Rep. Herrell asked whether anyone else would like to make any comments. **Susan Maxson**, an audience member, suggested that the provisions of a covenant marriage might be included in a prenuptial agreement.

III. Other

Larry Hembree, who testified at the previous meeting on the topic of Zachary's law, distributed a handout describing the number of sex offenders who violate parole (Exhibit 6). The Committee requested this information at the previous meeting.

The next meeting will take place on October 3, 2001, in Indianapolis. The Committee will discuss (1) civil immunity for volunteers; (2) the uniform parentage act; (3) tiered corrections; and (4) family law as it applies to marriage. Rep. Herrell adjourned the meeting at 3:30 p.m.